

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.5593 of 2004

Mrs.Smita Jayprakash Sohoni

Petitioner

Vs.

Manohar Balu Patil

since deceased through legal heirs:

(1a) Sadanand Manohar Patil & anr.

Respondents

Mr.R.A.Thorat for petitioner.

Ms.Anita Patil h/f.Mr.S.J.Ghogare for Resp.Nos.1(a).

CORAM: B.H.MARLAPALLE,J.

June 07, 2006.

P.C.

1. Heard Mr.Thorat, the learned counsel for the
petitioner-original defendant no.2 in S.C.Suit

No.6523 of 2002. Rule. Mrs.Anita Patil, learned

counsel for Respondent No.1(a) waives service.

2. Rule is taken up for final hearing forthwith
as the petition deserves to be decided at the
admission stage itself.

3. S.C.Suit No.6523 of 2002 was originally filed
by Manohar Babu Patil, the father of the present
petitioner and Defendant No.1 was Maharashtra Housing
Area Development Authority, Mumbai, whereas the
petitioner was impleaded as Defendant No.2. The suit
property is tenanted premises bearing no.3266,

Building No.22-A at Abhyudaya Nagar Prayas
 Co-operative Housing Society Ltd., Kalachowki, Mumbai
 400 033. Summons in the suit were served on the
 present petitioner on 17/12/2002 and, therefore, she
 was required to file a written statement, if so
 desired by 17/3/2003 as per the requirements of Order
 VIII Rule 1 of CPC. She caused her appearance
 through an Advocate in the Suit on 20/2/2003.
 Defendant No.1 filed its Written Statement on 20th
 March 2003 and adjournments were granted by the trial
 Court on the request of the defendant no.2 for filing
 Written Statement. It is not disputed that on
 20/11/2003 the trial Court extended the time to file
 Written Statement by defendant no.2 till 1/12/2003
 and again on 8/12/2003 it was extended to 15/12/2003.
 However, on 15/12/2003 the trial Court passed an
 order of no Written Statement and adjourned the suit
 to 13/1/2004. On 10/2/2004 the defendant no.2
 submitted an application for setting aside the no
 Written Statement order and for taking the Written
 Statement on record. This application has been
 dismissed by the impugned order dated 29/4/2004.

4. In her affidavit in support of the application

rejected by the impugned order, the petitioner stated

on oath that on 15/12/2003 she was present in the Court, she verified the Written Statement and when she came to file the same the order of no Written Statement was already passed. She further states that she was present in the Court at 10.30 a.m. on 15/12/2003 and on reading the board she noted that S.C.Suit No.6523 of 2002 was listed at serial no.4. By the time she returned to the Court after verifying the Written Statement, an order was passed by the Court of no Written Statement and, therefore, the Written Statement could not be taken on record. In para 2 of the said affidavit she stated further as under:

"I say that on 15/12/2003 the present suit was adjourned to 13/1/2004 and that the present suit appeared at Serial No.6 on the Board. I say that as the board was discharged, an application was made by my Advocate for taking my Written Statement on record. I say that the Hon'ble Court directed my Advocate to renew the application on the next adjourned date being 11/2/2004. I say that I have already served a copy of the Written Statement upon the Ld. Advocate for Defendant No.1."

5. It thus appears that on 15/12/2003 the Written Statement was verified as is clear from the R. & P. which was called by this Court. The Superintendent of the Court has endorsed on the verification and written the date as 15/12/2003. The petitioner's contention that by the time she returned to the Court after the Written Statement was verified on 15/12/2003, the suit was called out will have to be accepted more so when it was at serial no.4 on the board and the learned Judge was pleased to pass the no Written Statement order. When the Court had extended the time for filing the Written Statement upto 15/12/2003 and if the Written Statement was verified on the same day by the Court Officer, it cannot be accepted that the petitioner failed to make out grounds to take the Written Statement on record by setting aside the no Written Statement order passed on 15/12/2003. Mr.Thorat, the learned counsel for the petitioner rightly, in support of these contentions, relied upon the recent decision of the Supreme Court in the case of Shaikh Salim Haji Abdul Khayumsab vs. Kumar & ors. **[(2006) 1 SCC 46]**.

6. Mrs.Patil, the learned counsel for the

original plaintiff stated that the application for setting aside the no Written Statement order and for taking the Written Statement on record was filed belatedly and no explanation was furnished by the petitioner for this delay. As noted earlier, the suit was adjourned to 13/1/2004 and on that day it was listed at serial no.6 but the board was discharged. The petitioner in her affidavit stated on oath that an application was made by her Advocate for taking the Written Statement on record on 13/1/2004 itself but as the board was discharged the Advocate was advised to renew his request on the next date i.e. on 11/2/2004. Under these circumstances the application registered on 10/2/2004 cannot be

held to be belated. In the premises, the reasoning given by the trial Court in refusing to take the Written Statement on record and as set out in the impugned order is unsustainable.

7. In the result, this petition succeeds and the same is hereby allowed. The impugned order dated 29/4/2004 passed by the learned Judge, City Civil Court at Mumbai in S.C.Suit No.6523 of 2002 is hereby quashed and set aside and the no Written Statement order dated 15/12/2003 is quashed. The application

moved by the petitioner on 10/2/2004 is hereby
allowed and it is directed that the Written Statement
of the petitioner be taken on record.

8. Rule made absolute accordingly with no order
as to costs. Writ to go forthwith.

(B.H.MARLAPALLE,J.)